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97 888 NOV 25 1997

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No. 97-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

STATE OF MISSOURI, *et al.*,
Petitioners,

v.

MICHAEL C. LIDDELL, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITION FOR WRIT OF CERTIORARI

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November 25, 1997

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QUESTION PRESENTED

Whether, in spite of this Court's rulings in *Missouri* v. *Jenkins*, 515 U.S. 70 (1995), and *Milliken* v. *Bradley*, 418 U.S. 717 (1974), the Eighth Circuit correctly ruled in this 25-year-old case that a federal court may compel a State to bear the costs (here, more than $100 million per year) of an interdistrict desegregation remedy without a finding that the State committed an interdistrict constitutional violation that had a racially segregative effect across district lines.

PARTIES

In addition to the State of Missouri, the following officers or instrumentalities of the State are petitioners in this Court: Governor Mel Carnahan; Attorney General Jeremiah W. (Jay) Nixon; Treasurer Bob Holden; Commissioner of Administration Richard A. Hanson; Commissioner of Education Robert E. Bartman; the Missouri State Board of Education, and its Members: Sharon M. Williams, President, Betty Preston, Vice President, Thomas R. Davis, Peter F. Herschend, Jacqueline D. Wellington, William Kahn, Russell V. Thompson, and Rice Pete Burns, Jr.

The following persons or entities, who appeared as plaintiffs-appellees in the court below, are named as respondents in this Court: Michael C. Liddell; Kendra Liddell; Minnie Liddell; Roderick D. LeGrand; Lois LeGrand; Clodis Yarber; Samuel Yarber; Earline Caldwell; Lillie Caldwell; Gwendolyn Daniels; the City of St. Louis, Missouri; the National Association for the Advancement of Colored People; and the United States of America.

The following persons or entities, who appeared as defendants-appellees in the court below, are named as respondents in this Court pursuant to this Court's Rule 12.6: The Board of Education of the City of St. Louis, and its Members: Hattie R. Jackson, President, Renni B. Shuter, Paula V. Smith, Dr. Albert D. Bender, Sr., Marybeth McBryan, Thomas M. Nolan, William Purdy, Robbyn G. Wahby, and Madye Henson Whithead; Superintendent of Schools for the City of St. Louis Dr. Cleveland Hammonds, Jr.; St. Louis Collector of Revenue Ronald Leggett; Special School District of St. Louis County; Affton Board of Education; Bayless Board of Education; Brentwood Board of Education; Clayton Board of Education; Ferguson-Florissant Board of Education; Hancock Place Board of Education; Hazelwood Board of Education; Jennings Board of Education; Kirkwood Board of Education; Ladue Board of Education; Lindbergh Board

of Education; Maplewood-Richmond Heights Board of Education; Mehlville Board of Education; Normandy Board of Education; Parkway Board of Education; Pattonville Board of Education; Ritenour Board of Education; Riverview Gardens Board of Education; Rockwood Board of Education; University City Board of Education; Valley Park Board of Education; Webster Groves Board of Education; Wellston Board of Education; St. Louis County; St. Louis County Executive Buzz Westfall; St. Louis County Director of Administration James Baker; Collector of St. Louis County "Contract Account" Robert H. Peterson; St. Louis Career Education District; and St. Louis Teachers Union, Local 420, AFT, AFL-CIO.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully request that a writ of certiorari be issued to review the ruling of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Eighth Circuit is reported at 126 F.3d 1049 and is reproduced in the Appendix to this Petition for Certiorari ("Pet. App."), beginning at page 1a. The unpublished order of the United States District Court for the Eastern District of Missouri, denying the State of Missouri's motion to terminate its obligation under the court-ordered busing plan to fund new entrants into the St. Louis interdistrict student transfer program, was entered on April 10, 1997, and appears at Pet. App. 23a.

JURISDICTIONAL STATEMENT

The court of appeals entered its opinion and judgment on September 25, 1997. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part:

> No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

STATEMENT OF THE CASE

It has been the law since at least *Milliken* v. *Bradley*, 418 U.S. 717 (1974) ("*Milliken I*"), that, like all other constitutional remedies, "the scope of the [desegregation] remedy is determined by the nature and extent of the constitutional violation." *Id.* at 744. An important corollary to this fundamental rule of constitutional law is that

in a school desegregation case, "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." *Id.* at 745. This Court strongly reaffirmed this principle three Terms ago in *Missouri* v. *Jenkins*, 515 U.S. 70 (1995) ("*Jenkins III*"), holding that a federal court exceeds the bounds of its remedial authority under the Constitution where, as here, it imposes an *inter*district remedy in a school desegregation case involving only a finding of an *intra*district violation—a principle that even the dissent in *Jenkins III* characterized as "a rule of law that can claim both precedential support and intuitive sense." *Id.* at 158 (Souter, J., dissenting).

Instead of phasing out the State's $2 million per week interdistrict funding obligations, as plainly required by this Court's precedents, however, the Eighth Circuit held that the Court did not mean what it plainly said in *Jenkins III*. As the court of appeals would have it, an interdistrict remedy *may* be imposed on a State based upon a mere finding of an intradistrict violation, notwithstanding *Jenkins III*, as long as there has been no finding that there was *not* an interdistrict violation. This extraordinary holding is so manifestly inconsistent with two decades of decisions from this Court culminating in *Jenkins III* that it warrants summary reversal. At a minimum, the decision conflicts with a host of court of appeals decisions properly applying the rule of *Milliken I*, and the Court should therefore grant the petition to clarify the relationship between the holdings in *Jenkins III* and *Milliken I*.

BACKGROUND

This school desegregation case has been litigated in the federal courts for almost three decades. In all that time, the *only* finding of liability made by the courts below was intradistrict in nature—that is, a finding limited in scope to the St. Louis Public School District ("SLPS"). See, *e.g.*, *Liddell* v. *Missouri*, 731 F.2d 1294, 1302 (8th Cir.) (*en banc*) ("*Liddell VII*"), *cert. denied*, 469 U.S. 816 (1984). For the last 16 years, plaintiffs and their school

district allies have pursued, at the State's expense, the most expensive school desegregation remedy in the Nation's history. Under the resulting so-called "Voluntary Interdistrict Transfer Program" ("VIDT") agreed to by the plaintiffs, SLPS and numerous neighboring suburban school districts (all respondents here), but *not* the State of Missouri or any State agency, the State has been compelled, over its repeated objection, to fund interdistrict transfers of students between those districts since 1983.

The court-ordered interdistrict remedies in this case have cost the State of Missouri approximately $1.6 billion —funds that have flowed directly out of the State's budget and into SLPS and its VIDT partners. Pet. App. 27a. These funds include over $283 million for VIDT transportation, $595 million for tuition reimbursement (paid largely to suburban school districts), $36 million for capital payments to suburban districts to build new educational facilities to accommodate transfer students from SLPS, $107 million for capital within SLPS, $158 million for magnet school operating costs, and $531 million for educational programs in SLPS. *Id.* at 25a. Each week that the State is required to fund the interdistrict programs costs Missouri taxpayers approximately $2 million, for a total annual interdistrict remedy cost in excess of $100 million (*id.*) and a total annual remedial cost of approximately $150 million. *Id.* at 27a. As a result of these court-ordered expenditures, the current per-pupil cost of public education in St. Louis is approximately $8,100, which is substantially higher than the $4,500 average cost for the rest of the State. State Exh. 18a. To put Missouri's statewide desegregation funding obligations in perspective, the State's monetary contribution to desegregation efforts have been nearly as much as all other States combined, excepting only California. State Exh. 57, Testimony of Dr. Christine Rossell, Tr. vol. 1-A, at 54 (Mar. 5, 1996).

Procedural Background

1. *The Liability Phase.* On February 18, 1972, this suit was filed on behalf of Craton Liddell, then a minor

(and now an adult), his mother, and other children from St. Louis and their parents against the Board of Education of the City of St. Louis ("City Board"). The complaint alleged that the City Board had "effected and perpetuated" unconstitutional racial segregation in the operation of pubic schools within SLPS. On October 3, 1973, a class was certified on behalf of all school-age children and their parents residing in the metropolitan school district of the City of St. Louis. After the submission of various alternative plans for the desegregation of St. Louis public schools, the district court announced, on July 13, 1977, that it would be necessary to determine whether there had been any constitutional violation within SLPS. At that point, the City of St. Louis and the United States, among others, intervened as plaintiffs in the litigation, and petitioners were joined as defendants.

Following a lengthy trial that produced over 7,000 pages of transcript and approximately 1,200 exhibits, the court ruled that defendants had not committed any constitutional violation. 469 F. Supp. 1304 (E.D. Mo. 1979). The Eighth Circuit reversed. *Adams* v. *United States*, 620 F.2d 1277 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980). Based on its own review of the evidence, the appellate court found that demographic and other "factors cited by the [district] court, including actions of the state and federal governments, have intensified racial segregation in North St. Louis." *Id.* at 1291. The court accordingly remanded the case for development and implementation of a "system-wide remedy" to eliminate "[s]egregation in the elementary and secondary schools in St. Louis." *Id.*

2. *The Remedial Phase.* On remand, the district court conducted extensive evidentiary hearings concerning the mandated "system-wide remedy." The plan ultimately adopted by the district court sought to achieve racial balance within the St. Louis public schools by, among other things, reassigning students to achieve the greatest number of schools in which black students comprise be-

tween 30-50% of the student body. 491 F. Supp. 351, 356 (E.D. Mo. 1980). On the subject of interdistrict student transfers, the district court ordered the State, the United States and the City Board:

> To make every feasible effort to work out with the appropriate school districts in the [sic] St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation *in the City of St. Louis,* and which also insures that interdistrict pupil transfers will not impair the desegregation of the St. Louis school district ordered herein.

Id. at 353 (emphasis added). The court of appeals (per Heaney, J.) affirmed the interdistrict busing aspects of the plan as a "valid part of the attempt to fashion a workable remedy *within the City.*" 667 F.2d 643, 651 (8th Cir.) (*"Liddell III"*) (emphasis added), *cert. denied*, 454 U.S. 1081 (1981).

On August 24, 1981, the district court added numerous St. Louis County suburban school districts and three County school officials as parties defendant, a step that was necessary because the City of St. Louis is an autonomous political subdivision separate from surrounding St. Louis County. The City Board, which had formerly been a nominal defendant, was realigned as a plaintiff. The district court ordered that the State bear half of the estimated $22.1 million cost of the desegregation plan for the 1980-81 school year, and *all* of the cost of the interdistrict busing program. The Eighth Circuit upheld these funding orders, reasoning that the State "can be required to take those actions which will further the desegregation of the city schools even if the actions required will occur outside the boundaries of the city school district." 677 F.2d 626, 630 (8th Cir. 1982) (Heaney, J.) (*"Liddell V"*).

On August 6, 1992, the trial court, on remand, entered an order scheduling a trial on interdistrict liability and disclosing the mandatory interdistrict plan it would impose

in the event an interdistrict violation was found. Under this sweeping plan originally proposed by the plaintiffs, the court would displace the traditional boundaries of the city and suburban school districts and create a single unified metropolitan school district with a uniform tax rate. Under the threat of this *in terrorem* interdistrict plan, the suburban school districts soon thereafter joined the plaintiffs in what the court of appeals described as a "unique and comprehensive settlement agreement designed to further desegregation in the city schools." *Liddell VII*, 731 F.2d 1294, 1297 (8th Cir. 1984) (*en banc*).

The proposed consent decree embodying the settlement —which the State did not sign or agree to—expressly recited that the suburban districts did not admit any liability for a constitutional violation, but nonetheless obligated them to cooperate with SLPS in desegregating the public schools located within the City of St. Louis. The plan included the busing of students between SLPS and the suburban school districts. There was no limit placed on the number of students who could be bused from the County districts into the City, but transfers from the City to the County were capped at 15,000. *Id.* at 1302. Moreover, suburban districts could reject any transfers of black students from the City that would raise the overall percentage of black students in the suburban district above 25%. *Id.* at 1302 n.7.

The plan also included numerous features in addition to busing that were likewise aimed at reconfiguring the racial makeup of the school districts in and surrounding the City of St. Louis. The respective districts agreed to implement affirmative action programs for the hiring of teachers and create additional magnet schools. Over the State's objection, the district court approved and entered judgment upon the proposed consent decree on July 5, 1983, thereby pretermitting the scheduled interdistrict violation hearing. 567 F. Supp. 1037 (E.D. Mo. 1983). As a result, there has *never* been any proof adduced—much less any finding entered—in this entire litigation

that either the State (or any officer, agency or instrumentality thereof) or the City's neighboring suburban school districts committed an interdistrict violation that segregated students by race across district lines.

Although the city and suburban districts agreed to these costly interdistrict arrangements, they did not propose to pay for them; instead, the financial burden was imposed upon the State. As the court of appeals put it, the State was to be "totally responsible for the costs of the voluntary interdistrict transfers, the magnet schools, and various part-time and alternative integrative programs." 731 F.2d at 1300. Additionally, the State would be required to pay receiving districts an annual cash payment for each transfer student and to make an annual cash "incentive" payment to the sending district for each student transferred across district lines to attend school. *Id.* at 1302. This so-called "phantom" payment is significant; for each student transferred the sending district receives a payment equal to one-half of the State aid that a district receives for resident students who actually attend school in that district. Lastly, the State would be required to "pay one-half of the cost of the quality improvements in the city schools and one-half of the capital improvements required by the plan." *Id.* at 1300.

The court of appeals, sitting *en banc*, affirmed the decree in relevant part. *Liddell VII*, 731 F.2d 1294 (8th Cir. 1984) (Heaney, J.). Insofar as pertinent here, the State challenged the interdistrict transfers, relying on this Court's holding in *Milliken I* that in a desegregation case "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." 418 U.S. 717, 745 (1974). The court declined to follow *Milliken I*, asserting that "the interdistrict transfers are intrinsic to an effective remedy for the intradistrict violations." 731 F.2d at 1302. To support its ruling, the Eighth Circuit cited (*id.* at 1307) *Hills* v. *Gautreaux*, 425 U.S. 284 (1976), a case involving a desegregation

suit against the U.S. Department of Housing and Urban Development.

By virtue of the funding orders upheld by the court of appeals in the early 1980s, the City and participating County school districts have received significantly higher levels of State funding than school districts not under court order. By the 1994-95 school year, the most recent year for which the Missouri Department of Elementary and Secondary Education has comprehensive data available, the SLPS expended $8,132 per pupil. State Exh. 18A. This figure is substantially greater than the $4,553 per pupil average for the rest of the State, excluding Kansas City (which is also under federal court order). *Id.* Participating suburban school districts have also enjoyed the windfall benefits of the interdistrict funding orders in St. Louis. Many of these districts, including Clayton ($8,934) and Ladue ($8,487), spend between one and a half and two times the State average per pupil. *Id.* Because federal judges in St. Louis and Kansas City have commandeered a disproportionate share of the State educational budget, other school districts elsewhere in the State, both predominantly white (*e.g.*, Cole Camp—$3,409) and predominantly black (*e.g.*, Jennings—$3,772), have had far less revenue available to them. *Id.* Consequently, the funding orders here at issue profoundly distort the allocation of educational resources among local school districts throughout Missouri.

3. *Events Leading Up to the Court of Appeals' Decision.* Six years ago, in October 1991, the State first moved for a finding that the City schools had achieved "unitary" status, meaning that the vestiges of past *de jure* (or state-sponsored) segregation within the City of St. Louis had been eliminated. The court summarily denied that motion, and the State was required to continue funding the VIDT program at a weekly cost of $2 million. The State filed a new motion on May 7, 1992, this time requesting a declaration of partial unitary status. When one year had passed without the district court even scheduling a hearing, the State filed an amended unitary status motion in

November 1993. Two and a half years passed before the district court convened a hearing in March 1996.

While the unitary status motion languished before the district court, this Court issued its decision in *Jenkins III*, 515 U.S. 70 (1995), a case involving an equally protracted and expensive desegregation suit against the State concerning the Kansas City public schools. In his opinion for the Court, the Chief Justice reaffirmed the rule of *Milliken I*—namely, that "before a district court c[an] order an interdistrict remedy, there must be a showing that 'racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation.'" *Id.* at 93 (quoting *Milliken I*, 418 U.S. at 745). *Jenkins III* also clarified that the rule of *Milliken I* was not limited or superseded by *Hills* v. *Gautreaux*, the sole authority upon which the court of appeals in this case had relied (*Liddell VII*, 731 F.2d at 1307). 515 U.S. at 97-98.

On April 23, 1996, after a three-week hearing on Missouri's unitary status motion, the court essentially announced that it would take no action for the foreseeable future. Notwithstanding the undisputed fact that St. Louis currently has no racially discriminatory practices, policies or procedures in any area of school operations, and notwithstanding *Jenkins III*, the district court refused to revisit its 16-year-old interdistrict funding orders. Instead, the court indefinitely suspended all further proceedings and referred the case for mediation to an outspoken advocate of interdistrict busing who, in December 1995, had petitioned the district court *in this very case* "to maintain the city-county busing program."[1] See *St. Louis Post-Dispatch*, Apr. 26, 1996, at A-12.

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[1] Since his appointment in this case, the mediator has publicly advocated retaining the interdistrict transfer program. *See, e.g., St. Louis Post-Dispatch*, Oct. 8, 1997, at A-4 (quoting the Settlement Coordinator as calling for State legislation to continue the VIDT program indefinitely as part of a long-term solution to the educational needs of SLPS).

Far from coordinating any phase-out of the State's invalid interdistrict funding obligations or any return of SLPS schools to local control, the Settlement Coordinator announced that his mission was to develop a "long range plan" for, as he would later explain, "improving the quality of education" in St. Louis.[2] In his pursuit of these and other lofty goals, the Settlement Coordinator has initiated but a handful of meetings over 19 months. In light of the unreasonable demands of plaintiffs and their school district allies, no negotiated resolution is even remotely in sight. In fact, both SLPS and plaintiffs' attorney have recently stated categorically that there will be no settlement unless the State enacts legislation continuing the interdistrict student busing program and guaranteeing in perpetuity a substantial *increase* in State funding for the SLPS to $9,556 per pupil per year, which is more than twice the Missouri average and nearly twice the national average of $5,600 per pupil. See *St. Louis Post-Dispatch*, Nov. 6, 1997, at C-1. As a result, more than twenty years after this case began, and a full six years after the State first moved for a declaration of unitary status, the State is still being required to fund the interdistrict busing program, with no end in sight.

Decision of the Court of Appeals

After failed attempts to secure stays pending appeal from the court of appeals and Circuit Justice Thomas and a failed attempt to secure immediate appellate review (105 F.3d 1208 (8th Cir. 1997) (Heaney, J.)), the State renewed its argument that this Court's intervening decision in *Jenkins III* compelled a phase-out of the interdistrict funding orders. The district court summarily overruled the objection, in an order dated April 10, 1997. Pet. App. 23a-24a. Again, the State was rebuffed on appeal by the Eighth Circuit per Judge Heaney. Pet. App. 1a.

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[2] *See St. Louis Post-Dispatch*, Apr. 26, 1996, at A-12; Memorandum from Settlement Coordinator to Interested Parties, at 2 (May 10, 1996).

The court of appeals ruled that the district court had properly declined to phase out the interdistrict busing program because *Jenkins III* does not cast doubt on the propriety of imposing interdistrict remedies to address intradistrict violations. The court indicated that, unlike the remedy invalidated in *Jenkins III* as unjustified absent an interdistrict violation, "neither 'desegregative attractiveness' nor 'suburban comparability' were the basis of" the interdistrict remedy in this case. Pet. App. 20a. The panel added that "[a] premise of *Jenkins III* was that the trial court specifically found that no interdistrict violation had taken place" (*id.* at 19a), whereas "[n]o such determination has been made here." *Id.* Recognizing that its proffered distinctions of *Jenkins III* conflict with the Court's opinion, the panel concluded its discussion with the following remarkable observation:

> There is, of course, language in the majority opinion in *Jenkins III* suggesting that no interdistrict relief can be granted unless an interdistrict violation or segregative effects have been proved. This language must be tempered by the facts in *Jenkins III* and limited nature of the actual holding. In our view, the question remains sufficiently open to permit us to follow our numerous precedents and hold that *Jenkins III* does not require us to hold that the [interdistrict busing program] must be terminated or phased out at this time.

Id. at 21a.[3]

The court of appeals also held that the district court had properly deferred ruling on whether the intradistrict viola-

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[3] Astonishingly, the Eighth Circuit has since ruled that, despite the complete reversal in *Jenkins III* on the only issue decided by the Court—namely, the validity of the interdistrict remedies in the absence of an adjudicated interdistrict violation—the plaintiffs in the *Jenkins* litigation were "prevailing parties" entitled to attorneys fees and costs payable by the State for their losing effort in this Court. *Jenkins* v. *Missouri*, No. 96-3870, 1997 WL 629800 (8th Cir. Oct. 14, 1997). The State is considering seeking this Court's review of that determination, which, like the decision here under review, adopted an exceedingly crabbed reading of *Jenkins III*.

tion had been abated through achievement of unitary status within SLPS. The Eighth Circuit held that, although "the St. Louis schools have achieved a high degree of integration" (Pet. App. 20a), the State's unitary status motion cannot be decided until the settlement process has run its course. *Id.* at 13a. The panel brushed aside the State's contention that an impasse exists on the question of halting new entrants into the VIDT program, stating tersely that "counsel for all the other parties disagreed" with that assessment. *Id.*[4] As a result, the State has been compelled to continue indefinitely funding the interdistrict remedies ordered more than a decade ago.

REASONS FOR GRANTING THE PETITION

To say that the decision below conflicts with this Court's decisions in *Milliken I* and *Jenkins III* would be an understatement. These decisions are absolutely dispositive on the validity of the interdistrict remedy ordered in this case, yet the Eighth Circuit has simply refused to follow the law as declared by this Court as recently as three Terms ago. The Eighth Circuit's decision is so clearly wrong under these precedents as to warrant summary reversal. The result of the lower court's refusal to heed the Court's mandate in *Jenkins III* is that a conflict has been injected into the previously uniform body of Circuit law. This body of law recognizes, in sharp contrast to the court below, that federal courts simply are not authorized to impose an interdistrict remedy on a State absent an express finding that there has been both an interdistrict violation of the Constitution and resulting interdistrict segregative effects. Given the important federalism and separation-of-powers interests that are jeopardized by the ruling below —not to mention respondents' continued assault on the State treasury—the Court should issue a writ of certiorari

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[4] The court instructed the district court that, in the event of an impasse, it should weigh against the State's request for a determination of unitary status the possibility that the effect of cessation of interdistrict busing efforts "w[ould] most probably be a significant resegregation of the city schools." Pet. App. at 17a.

to correct the manifest excesses of the court below and to provide needed guidance on these important issues of constitutional law.

I. THE EIGHTH CIRCUIT'S RULING THAT AN INTERDISTRICT VIOLATION IS NOT A PREREQUISITE FOR INTERDISTRICT RELIEF IS SO PLAINLY WRONG UNDER THIS COURT'S PRECEDENTS AS TO WARRANT SUMMARY REVERSAL.

The proper resolution of this case is controlled by a long line of decisions from this Court culminating in *Jenkins III*. The Eighth Circuit's contrary decision, which rests on a contrived distinction of *Jenkins III*, is so manifestly unsupportable under this Court's precedents that it should be summarily reversed.

a. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), this Court admonished that "judicial powers may be exercised only on the basis of a constitutional violation." *Id.* at 16. Such a violation is not only necessary for judicial relief; it also determines the proper scope of relief. Although "breadth and flexibility are inherent in judicial remedies" (*id.* at 15), the "task" of a federal court in a desegregation case is necessarily limited "to correct[ing], by a balancing of the individual and collective interests, the condition that offends the Constitution." *Id.* at 16. Judicial performance of that critical task would "be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities," such as countering private housing choices or demographic factors. *Id.* at 22; see also, *e.g.*, *Milliken* v. *Bradley*, 433 U.S. 267, 281-82 (1977) ("*Milliken II*") ("well-settled" that "federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation").

As this Court squarely ruled in *Milliken I*, it is this fundamental rule of constitutional remedies—with its obvious federalism and separation-of-powers underpinnings

—that forbids interdistrict relief in the absence of a proven interdistrict violation. In that case, the district court found that the Detroit Board of Education and the State of Michigan had committed a series of constitutional violations in Detroit that produced a dual (or racially segregated) school system in Detroit. 418 U.S. at 725-27. Even though these findings were intradistrict in nature (*id.* at 738), and even though the neighboring suburban school districts had not been adjudged guilty of any violations, the court of appeals nonetheless imposed a sweeping interdistrict busing remedy that encompassed 53 suburban school districts (*id.* at 733-34), reasoning that " 'intra-city plans [are] inadequate to desegregate such schools.' " *Id.* at 732. This Court set aside the interdistrict remedy, holding that absent a finding of an interdistrict violation, "there is no constitutional power in the courts to decree [interdistrict] relief." *Id.* at 749.

This Court ruled that imposing an interdistrict remedy in such circumstances contravened the basic teaching of *Swann*, 402 U.S. at 744-45. Lest the point be lost, the Court reiterated, plainly and pointedly, that "without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy." *Id.* at 745; see also *id.* at 752 (restating its "holding" that "absent an interdistrict violation, there is no basis for an interdistrict remedy").

This Court reaffirmed these principles in *Jenkins III*, 515 U.S. 70 (1995), and made clear that they apply to the "voluntary" interdistrict remedies favored by the Eighth Circuit. In Kansas City, as here, the State of Missouri was compelled to finance extravagant interdistrict measures on a record where the only constitutional violations found were confined to the Kansas City public schools and thus were purely intradistrict in nature. Contrary to the short-shrift *Milliken I* received from the court below, *Jenkins III* grounded its entire analysis on the principles announced in that case: "[I]n *Milliken I*, we held that a District Court exceeded its authority in fashioning interdistrict relief where the surrounding school districts

had not themselves been guilty of any constitutional violation." *Id.* at 87 (citation omitted); see also *id.* at 93. "The proper response to an intradistrict violation," *Jenkins III* ruled, "is an intradistrict remedy." *Id.* at 90. The dissent concurred in the view that "there is error in imposing an interdistrict remedy to cure a merely intradistrict violation," which it described as "a rule of law that can claim both precedential support and intuitive sense." *Id.* at 158-59 (Souter, J., dissenting). Accordingly, the Court set aside the interdistrict remedies ordered in the Kansas City litigation (*e.g.*, the creation of city schools so attractive as to induce suburban white students to transfer into black inner-city schools), which the Court viewed as materially identical to the cross-district student transfers involved in *Milliken I*.

Crucial to its result, *Jenkins III* distinguished *Hills* v. *Gautreaux*, 425 U.S. 284 (1976), the sole case on which the court of appeals here relied when it initially approved the interdistrict funding orders against the State (*Liddell VII*, 731 F.2d at 1307-08). *Jenkins III* ruled: "*Gautreaux* . . . involved the imposition of a remedy upon a federal agency. Thus, it did not raise the same federalism concerns that are implicated when a federal court issues a remedial order against a State." 515 U.S. at 98; see also *id.* at 105-06 (O'Connor, J., concurring) ("*Gautreaux*, however, does not eliminate the [rule] of *Milliken I* . . .; if anything, our opinion repeatedly reaffirmed that principle[.]"). Therefore, as Justice O'Connor concluded in agreement with the Court, "*Gautreaux* simply does not give federal courts a blank check to impose unlimited remedies upon a constitutional violator." *Id.* at 106.

These precedents are thoroughly dispositive here. First, there can be no question that busing students across district lines is an interdistrict remedy within the meaning of *Milliken I* and *Jenkins III*; indeed, both decisions explicitly denominate interdistrict busing as such, see *id.* at 92; *Milliken I*, 418 U.S. at 744-45. Second, it is equally clear that no interdistrict violation causing segregative

effects in St. Louis was found to have been committed in this case by anyone, including the State and the suburban school districts. There has never even been a hearing or the submission of proofs, much less an adjudication, on the interdistrict violation issue. Accordingly, the courts below have properly conceded that this case involves solely an intradistrict violation. See, *e.g.*, *Liddell VII*, 731 F.2d at 1297 (remedies "designed to further desegregation in the city schools"); *Liddell* v. *Board of Educ.*, 567 F. Supp. 1037, 1059 (E.D. Mo. 1983) ("interdistrict efforts" were intended "to remedy the segregated conditions found to exist within the City [of St. Louis]"). Therefore, *Jenkins III* and *Milliken I* compel the conclusion that the interdistrict funding obligations imposed on the State for the last decade over its steadfast objection are patently in excess of federal remedial authority under the Constitution.

b. Disturbed by the prospect of having to release the State from what it suggested was " 'the most creative social experiment of our time' " (Pet. App. 14a n.8 (quoting district court)), the Eighth Circuit simply refused to follow *Jenkins III*. It purported to distinguish the case on two grounds. Both are specious.

First, the court indicated that the Chief Justice's opinion for the Court in *Jenkins III*—which it inexplicably deemed only a "plurality opinion" (Pet. App. 20a)—applies only where the interdistrict remedy in question is intended to promote the " 'desegregative attractiveness' " of city schools to students in other districts or " 'suburban comparability.' " *Id.* This asserted distinction does not withstand even cursory analysis. There is nothing special about orders promoting "desegregative attractiveness" or "suburban comparability," as distinguished from other interdistrict remedies, that limits their use to situations where interdistrict violations have been proven. To the contrary, under *Jenkins III any* "remedy with an interdistrict purpose" is *ultra vires* absent findings of an interdistrict violation and segregative effect. 515 U.S. at 97. Indeed, the notion that *Jenkins III* is limited to orders

promoting the goals of "desegregative attractiveness" or "suburban comparability" is dispelled by the fact that the Court explicitly concluded that absent a proven interdistrict violation, a court "lacks the remedial authority" to order "the interdistrict transfer of students." *Id.* at 92. In fact, *Milliken I*, the central precedent for *Jenkins III*, struck down an interdistrict busing remedy that plainly served neither goal.

Second, the panel held that *Jenkins III* puts interdistrict relief beyond federal judicial reach only where the "trial court [has] specifically found that no interdistrict violation had taken place." Pet. App. 19a. As even the court below was constrained to concede (*id.* at 21a), the language of *Jenkins III* is flatly inconsistent with this tortured reading of the case. The Court did not hold merely that interdistrict remedies are inappropriate where it has been found that no interdistrict violation occurred—a holding that would be essentially tautological. Rather, the Court held, as it had in *Milliken I*, that interdistrict relief is improper as a matter of law *unless* there is a predicate finding of an interdistrict violation that caused interdistrict segregation. See, *e.g.*, *Jenkins III*, 515 U.S. at 97-98 ("A district court seeking to remedy an *intra*district violation that has not 'directly caused' significant interdistrict effects . . . exceeds its remedial authority if it orders a remedy with an interdistrict purpose.") (citation omitted); *Milliken I*, 418 U.S. at 745 ("[W]ithout an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy."). Whether there is a finding of no interdistrict violation, or simply no adjudication of whether or not such a violation occurred, is beside the point—the court is left solely with an intradistrict violation, and the clear rule of *Jenkins III* is that "[t]he proper response to an intradistrict violation is an intradistrict remedy." 515 U.S. at 90.

c. Perhaps recognizing the insufficiency of its attempts to avoid this Court's unambiguous mandate in *Jenkins III*, the court of appeals added a self-styled "due process" rationale for its decision. The court ruled that, because

the suburban school districts have voluntarily accepted transfer students from the City for 12 years in reliance on State funding, vacating the interdistrict funding decree against the State "would violate their fundamental right to due process." Pet. App. 19a. This holding—for which the court tellingly cited no authority—is nothing short of astonishing.

The unconstitutional interdistrict funding orders did not confer on those districts (or anyone else) a right to retain State funding for interdistrict remedies. Injunctions and consent decrees, by definition, do not confer or create rights; rather, they enforce preexisting rights and obligations under current law and conditions. See, *e.g.*, *United States* v. *Swift & Co.*, 286 U.S. 106 (1932). As such, there can be no protectible reliance on an injunction or a consent decree because such orders "always" remain subject to modification, *id.* at 114, particularly in the context of school desegregation remedies which are necessarily "intended as a temporary measure." *Freeman* v. *Pitts*, 503 U.S. 467, 489 (1992); see also *Board of Educ.* v. *Dowell*, 498 U.S. 237, 248 (1991). Given this fact, in addition to the inherently forward-looking nature of injunctive relief, there can be no legitimate reliance interests that would stand in the way of correcting the remedial excesses of the lower courts in the wake of *Jenkins III*. See *Agostini* v. *Felton*, 117 S. Ct. 1997, 2006 (1997) (holding that "[a] court errs when it refuses to modify an injunction or consent decree" in light of changes in the factual or legal landscape); see also, *e.g.*, *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367, 388 (1992); *System Fed'n No. 91 Ry. Employee's Dep't* v. *Wright*, 364 U.S. 642, 647 (1961). The Eighth Circuit's novel conception of due process, therefore, fails to provide even a colorable justification for refusing to follow *Jenkins III*.[5]

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[5] Indeed, the court of appeals' concern about the unfairness of applying *Jenkins III* to upset the reliance of plaintiffs and their school district allies on prior law smacks of the "selective prospectivity" this Court has condemned as inconsistent with the proper judicial function under Article III. *See Reynoldsville Casket*

The irony of the court's concern for the "rights" of suburban school districts is palpable given its complete lack of concern for the rights of the State of Missouri throughout this protracted litigation. Due process concerns notwithstanding, the State has *never* had a hearing regarding its interdistrict liability, yet it has been compelled to pay more than $1 billion on extensive interdistrict remedies. Pet. App. 25a. The fact that plaintiffs and the City and County districts agreed among themselves to interdistrict relief does not—and *cannot*, consistent with due process—bind the State to fund such relief. See, *e.g.*, *Local No. 93 Int'l Ass'n of Firefighters* v. *Cleveland*, 478 U.S. 501, 529 (1986). Of course, as previously shown, at least since *Jenkins III*, if not *Milliken I*, the State's intradistrict liability does not justify any requirement that it undertake interdistrict remedial efforts.

Likewise insufficient is the possibility that termination of interdistrict relief might result, in the court of appeals' words, in "resegregation of the city schools" (Pet. App. 17a). As Justice Kennedy explained for the Court in *Freeman* v. *Pitts*:

> Racial balance is not to be achieved for its own sake. It is to be pursued when racial imbalance has been caused by a constitutional violation. Once the racial imbalance due to the *de jure* violation has been

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Co. v. *Hyde*, 514 U.S. 749, 752 (1995); *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 97 (1993). As this Court ruled in *Harper*: "When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule. . . . In both civil and criminal cases, we can scarcely permit 'the substantive law [to] shift and spring' according to 'the particular equities of [individual parties'] claims' of actual reliance on an old rule and harm from a retroactive application of the new rule." *Id.* (quoting *James B. Beam Distilling Co.* v. *Georgia*, 501 U.S. 529, 543 (1991) (plurality opinion of Souter, J.)). Because *Jenkins III* applied the rule it announced to the case before it, and because this case was pending in court at that time, the Eighth Circuit was required to do the same in this case.

> remedied, the school district is under no duty to remedy imbalance that is caused by demographic factors.

503 U.S. at 494; see generally *Jenkins III*, 505 U.S. at 91 (explaining that "we have rejected the suggestion 'that schools which have a majority of Negro students are not 'desegregated' whatever the racial makeup of the school district's population and however neutrally the district lines have been drawn and administered' ") (quoting *Milliken I*, 418 U.S. at 747 n.22); *Pasadena Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 436 (1976) (same as to demographic shifts "not attributed to any segregative acts on the part of the [school district]").

In short, it is well settled by numerous precedents from this Court that federal courts may not compel States to fund or otherwise participate in interdistrict remedies absent an adjudication of interdistrict liability. This principle is dispositive here because there has admittedly been no finding that the State or any suburban school district committed any interdistrict violations, much less interdistrict violations that produced racial segregation across district lines. By upholding the interdistrict remedies against the State *in toto*, the Eighth Circuit has reached the very unconstitutional result condemned by this Court's precedents and has overstepped the bounds of its proper remedial authority.

d. The decision below is so clearly contrary to *Jenkins III* and *Milliken I* that this Court should enter a summary reversal order. Although this Court's primary function is not the correction of errors, it is well established that "summary disposition is appropriate to correct clearly erroneous decisions of lower courts." R. Stern, *et al.*, Supreme *Court Practice* § 5.12(c), at 251 (7th ed. 1993) (citing cases). As a consequence, this Court has not hesitated to reverse summarily when a lower court has "refus[ed] to recognize that [its] case was controlled" by this Court's precedents, *United States* v. *Nachtigal*, 507 U.S. 1, 5 (1993) (*per curiam*), or has otherwise decided a case in a manner plainly contrary to such precedents. See,

e.g., *Bibles* v. *Oregon Natural Desert Ass'n*, 117 S. Ct. 795, 795 (1997) (*per curiam*). As this Court has noted "it is an odd notion of judicial restraint that would compel us to cast a blind eye on overreaching by lower federal courts," especially where, as here, the overreaching implicates federalism concerns. *Leavitt* v. *Jane L.*, 116 S. Ct. 2068, 2072 (1996) (*per curiam*) (summarily reversing appellate decision invalidating entire state statute contrary to express severability provision); see also *Wood* v. *Bartholomew*, 116 S. Ct. 7, 11 (1995) (*per curiam*) (granting summary reversal where, as a result of lower court's erroneous order, "the proper delicate balance between the federal courts and the States is upset").

These decisions provide ample precedent for entry of an order of summary reversal correcting the Eighth Circuit's manifestly mistaken view of the proper scope of the remedial authority of the federal courts in school desegregation cases. That the court of appeals' order upsets the delicate balance between the federal courts and the States cannot be denied. With the approbation of the court below, vast sums of money will continue to be commandeered from the State budget, over the State's objection, to fund costly interdistrict remedies that, as a matter of law, are not an appropriate response to the intradistrict violation found to have occurred decades ago within the geographic confines of the City of St. Louis.

The scope of the interdistrict remedies imposed on the State is, by any measure, staggering. As of February 1996, the State had expended more than $1 billion on the interdistrict components of this remedy alone. Pet. App. 25a. The current annual cost to State taxpayers of continuing the interdistrict transfer program is in excess of $100 million. *Id.* This is unquestionably a significant amount of money, which the State could otherwise devote to a host of other vital and underfunded competing State programs.

This is not merely a question of money; it is a question of freedom and of local autonomy. The requirement that the State continue, for the foreseeable future, to fund

busing and other extensive interdistrict remedies after more than a decade of active desegregation efforts—efforts that have *already* brought SLPS a "high degree of integration" (Pet. App. 20a)—has deprived the State of its fundamental right to decide for itself, free from judicial command, how best to allocate its resources. Under the Constitution, the political institutions of the State of Missouri, and *not* federal judges, are entitled to make these types of spending decisions through the normal democratic process. See *Jenkins III*, 515 U.S. at 133 (Thomas, J., concurring) (explaining that "budgeting" is a function that "involve[s] a legislative or executive, rather than a judicial, power" and that "[f]ederal judges cannot make the fundamentally political decisions as to which priorities are to receive funds and staff").

In this sense, the decision below is especially worthy of review on the fundamental question of the legitimacy of the interdistrict remedy foisted upon the State. The Eighth Circuit's decision "is not merely an erroneous adjudication of a lawsuit between private litigants, but an improper intrusion by a federal court into the workings of [a governmental body]." *INS* v. *Legalization Assistance Project*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., *in chambers*) (granting stay pending appeal). As Justice Thomas explained in *Jenkins III*, "[a] structural reform [school desegregation] decree eviscerates a State's discretionary authority over its own program and budgets and . . . strip[s] state and local governments of one of their most important governmental responsibilities." 515 U.S. at 131 (concurring opinion).

Consistent with this assessment, the Court has repeatedly recognized that school desegregation orders implicate serious "federalism concerns," *id.* at 99 (majority opinion), not to mention "separation of powers" considerations stemming from judicial arrogation of legislative and executive functions. *Id.* at 131 (Thomas, J., concurring); see also *id.* at 112-13 (O'Connor, J., concurring) (same). These grave constitutional implications arising from the Eighth Circuit's overreaching in this sensi-

tive area warrant authoritative guidance from this Court, at this time, on the legitimacy of the interdistrict aspects of the remedies imposed on the State. This Court should enter an order of summary reversal directing the Eighth Circuit to phase out the interdictrict funding orders against the State by barring new entrants into the VIDT program.

II. THE JUDGMENT OF THE COURT OF APPEALS IS CONTRARY TO THE DECISIONS OF OTHER CIRCUITS, WHICH HAVE UNIFORMLY RECOGNIZED THAT AN INTERDISTRICT REMEDY IS IMPROPER ABSENT A PROVEN INTERDISTRICT VIOLATION.

At a minimum, the Court should grant certiorari to resolve the Circuit split the Eighth Circuit's ruling in this case has created concerning the propriety of awarding interdistrict relief in the absence of express findings of interdistrict constitutional violations. Prior to the court of appeals' rulings in this case, the Circuits uniformly recognized that under *Milliken I* and its progeny, an interdistrict remedy simply cannot stand without an adjudged predicate interdistrict violation found to have produced interdistrict racial segregation. In the event the Court elects not to reverse summarily, a writ of certiorari should issue to resolve this Circuit split and clarify the relationship between *Milliken I* and *Jenkins III* and the appropriate constitutional limits on federal remedial authority over the States.

As previously indicated, the court below held that interdistrict remedies may freely be imposed, as a means of redressing a purely intradistrict violation, as long as there is no express finding that no interdistrict violation occurred (Pet. App. 19a), and as long as the interdistrict decree does not serve the goals of "desegregative attractiveness" or "suburban comparability." *Id.* at 20. Numerous decisions from other Circuits stand in square conflict with the ruling of the Eighth Circuit below; *none* has reached any similar ruling.

The ruling of the Fifth Circuit in *Lauderdale County School District* v. *Enterprise Consolidated School District*, 24 F.3d 671 (1994), is typical of the decisions that observe the constitutional limitations on the use of interdistrict desegregation remedies. There, the magistrate judge ordered interdistrict busing after finding that neighboring school districts had taken certain interdistrict actions (*e.g.*, annexations of territory in neighboring districts and acceptances of cross-district student transfers) with respect to a school district that later developed a racially identifiable school. The court of appeals ruled that there was "no question" that the magistrate could enjoin unlawful interdistrict transfers that produced segregated schools, but that "[i]t is a different question, however, whether a court can order the interdistrict transfer of students." *Id.* at 683. For guidance on that question, the Fifth Circuit turned to *Milliken I*. *Id.*

In contrast to the Eighth Circuit's ruling below that an interdistrict remedy may be proper without an adjudicated interdistrict violation, the Fifth Circuit squarely held to the contrary. In *Lauderdale*, the court ruled that "*Milliken* [*I*] requires that an interdistrict remedy be imposed only upon 'proof of unconstitutional governmental action that has been a substantial cause of a significant interdistrict segregative effect.' " *Id.* at 684 (quoting *Lee* v. *Lee County Bd. of Educ.*, 639 F.2d 1243, 1256 (5th Cir. 1981)); see generally *United States* v. *Mississippi*, 921 F.2d 604, 607 (5th Cir. 1991) ("*Milliken* imposes a two-step analysis (1) effect—has the complained of state or local act had a segregative effect across district lines; and (2) intent—was the complained of act done with segregative intent. Both prongs of the test must be met to justify interdistrict relief."). Because the necessary predicate findings for interdistrict relief could not be made on the record, the *Lauderdale* court reversed the interdistrict busing order.

Several other Circuits have reached the same conclusions on the propriety of interdistrict remedies in desegregation cases. The court in *Stout* v. *Jefferson County*

Board of Education, 845 F.2d 1559 (11th Cir. 1988), put the matter bluntly: "Interdistrict relief is inappropriate absent a demonstration of an interdistrict violation and an interdistrict effect." *Id.* at 1562 (citing *Milliken I*); see also *Goldsboro City Bd. of Educ.* v. *Wayne County Bd. of Educ.*, 745 F.2d 324, 332 (4th Cir. 1984) (holding that *Milliken I*'s requirement of proven interdistrict violations constitutes a "formidable hurdle" that "a plaintiff must overcome . . . to obtain interdistrict relief"); *Berry* v. *School Dist.*, 698 F.2d 813, 817-18 (6th Cir. 1983) ("[S]chool desegregation case law in the Supreme Court limits this [interdistrict] remedy to situations where the race discrimination and intentional segregative practices are such as to have been a substantial cause of the condition which requires interdistrict solution."), *cert. denied*, 464 U.S. 892 (1983); *United States* v. *Board of School Comm'rs*, 637 F.2d 1101, 1104 (7th Cir.) ("[A]n interdistrict remedy such as that ordered by the district court must be predicated on a finding that official action, taken with a discriminatory purpose, was a substantial cause of interdistrict segregation.") (citations omitted), *cert. denied*, 449 U.S. 838 (1980). As Chief Judge Posner recently wrote for the Seventh Circuit, absent findings of interdistrict violations and segregative effect, "[j]udges may not issue busing orders . . . that send the kids outside the boundaries of the public school district in which they live." *United States* v. *Board of School Comm'rs*, No. 97-1530, 1997 WL 631330, at *2 (7th Cir. Oct. 14, 1997).

Each of these decisions is completely faithful to *Milliken I* and *Jenkins III*, and in square conflict with the Eighth Circuit's ruling here. Contrary to the court below, these decisions expressly hold that interdistrict relief simply may not be granted absent an explicit finding (as opposed to mere allegations) of an interdistrict violation. Compare, *e.g.*, *Lee*, 639 F.2d at 1265 (holding that an "*express finding*" is "necessary to support interdistrict relief under *Milliken*") (emphasis added); *Board of School Comm'rs*,

637 F.2d at 1104 (holding that interdistrict remedies "*must be predicated on a finding*" sufficient under *Milliken I*) (emphasis added) *with* Pet. App. 19a (interdistrict remedy proper here because "from the beginning the plaintiffs asserted interdistrict violations"). Here, neither court below made a finding that an interdistrict violation occurred because, at the request of plaintiffs, SLPS and the suburban school districts, no interdistrict violation hearing was ever conducted. By affirming a concededly interdistrict remedy notwithstanding the admitted absence of express findings of any interdistrict violation, the Eighth Circuit created a conflict with the Fourth, Fifth, Sixth and Seventh Circuits, all of which correctly recognize that such findings are the constitutional *sine qua non* for interdistrict relief. This Court should grant certiorari to resolve this Circuit conflict and, in doing so, to clarify the constitutional limitations on the remedial authority of the federal courts over the States.

III. THIS COURT'S INTERVENTION IS GRAVELY NEEDED TO CORRECT THE SYSTEMATIC OVERREACHING THAT HAS OCCURRED IN THIS LITIGATION AND TO VINDICATE THE FEDERALISM AND SEPARATION-OF-POWERS CONCERNS EMBODIED IN *JENKINS III* AND *MILLIKEN I*.

There are substantial reasons for this Court to hear this case at this time. First, the sheer cost and scope of the remedies the State has been required to fund for more than a decade, and the attendant loss of control of State budgetary decisions, are of such proportions as to merit a determination of the fundamental legitimacy of the interdistrict remedial phase under *Jenkins III* before further scarce time and resources are expended on remedies that lack a constitutional basis. Second, the history of this case shows that this entire proceeding has been collusive between the plaintiffs and their school district allies, and none of the courts below (and certainly not the parties who have benefitted financially at the State's expense) has any interest in facilitating achievement of the end goal of all desegregation cases—the return of local schools to the

control of local governing bodies operating in compliance with the Constitution. These factors, in addition to the sheer importance of the issues raised, provide compelling reasons for this Court's intervention at this juncture as the State enters its third decade of federal court rule in St. Louis.

a. This Court's decisions at the certiorari stage have reflected the national importance of providing clear guidance in desegregation cases and facilitating the earliest practicable phase-out of the federal courts' tutelage over state and local institutions. In recent years, this Court has repeatedly heard cases involving challenges to school desegregation orders that, like those entered in this case by the courts below, have spanned decades. See, *e.g.*, *Jenkins III*, 515 U.S. 70 (1995); *Freeman* v. *Pitts*, 503 U.S. 467 (1992); *Board of Educ.* v. *Dowell*, 498 U.S. 237 (1991); *Missouri* v. *Jenkins*, 495 U.S. 33 (1990) ("*Jenkins II*"). The Court has also repeatedly admonished lower federal courts that it is "essential" that they "[r]eturn[] schools to the control of local authorities *at the earliest practicable date.*" *Freeman*, 503 U.S. at 490 (emphasis added). The " 'vital national tradition' " of " 'local autonomy of school districts' " requires no less. *Id.* (quoting *Dayton Bd. of Educ.* v. *Brinkman*, 433 U.S. 406, 410 (1977)). In light of these cases, it should be clear that the issue the State presents concerning the legitimate scope of the interdistrict remedial orders entered against it in this 25-year-old desegregation case is worthy of this Court's review.

The pendency of proceedings before the Settlement Coordinator provides no reason for this Court to postpone reining in the constitutional excesses of the Eighth Circuit. Although the court of appeals ruled that the State's motion for a declaration of unitary status concerning the *intra*district violation cannot be taken up while settlement negotiations are pending, it did *not* view those negotiations as reason not to consider the entirely distinct (and purely

legal) question of the validity of the *inter*district remedies herein at issue. To the contrary, the court of appeals squarely addressed that issue on the merits and definitively held that, despite *Jenkins III*, the interdistrict remedies imposed on the State are a valid means of redressing the State's adjudged intradistrict violation (Pet. App. 20a-21a). To defer review of the validity of those interdistrict remedies would not only be unjustified; it would work a severe injustice on the State and its citizens by requiring the continued funding of interdistrict remedies for years to come—without *any* prospect of recouping those funds at a later time—despite the conceded absence of any finding of an interdistrict violation warranting interdistrict relief.

Another reason for the Court not to stay its hand at this point is that plaintiffs, SLPS and their suburban school district allies are using the settlement process not as a means of winding up federal court supervision in St. Louis, but rather as a means of extracting a permanent (and even more costly) remedy from the Missouri Legislature, euphemistically described by plaintiffs' attorney as "a new investment in education." Transcript of Hearings of Missouri Joint Interim Committee on School Desegregation and Finance Issues, at 323 (Oct. 7, 1997) (testimony of William Taylor). Only last month, he warned the Legislature that the only way to reach a settlement in this case is for the State to "institutionalize and improve" the court-ordered plan. *Id.* at 332. Similarly, SLPS recently demanded that any settlement in St. Louis be conditioned on enactment of a state statute locking in permanent annual funding for SLPS of $9,556 per pupil (with adjustments for inflation), over and above the $865 million SLPS has demanded for capital and non-operational needs and the $1.6 billion the State has already expended on desegregation funding for St. Louis. See *St. Louis Post-Dispatch*, Nov. 7, 1997, at A-1; *id.*, Nov. 6, 1997, at C-1. These patently unreasonable demands by respondents show that the settlement process is not being used

for a legitimate purpose, and will not, through no fault of the State, lead to any settlement.

b. Finally, this Court should not close its eyes to the fact that this case presents unusually compelling circumstances warranting this Court's intervention. The entire history of the 17-year remedial phase of this proceeding has been characterized by collusion and delay, all for the purpose of endlessly delaying achievement of the "ultimate objective" in school desegregation cases, which is "to return school districts to the control of local authorities." *Freeman*, 503 U.S. at 489. SLPS has been a "friendly adversary" of respondents, acquiescing with alacrity in each new program proposed by respondents and ordered by the district court at the State's expense, and vigorously opposing any limitation on such programs. *Cf. Jenkins III*, 515 U.S. at 99-100 (noting same characteristic of Kansas City case); see also *Jenkins II*, 495 U.S. at 76 (Kennedy, J., concurring in part and concurring in judgment). The strategy has succeeded, to the tune of $1.6 billion to date and $2.9 million per week going forward, with the inequitable result that the average per-pupil expenditure in St. Louis is almost double that of the average for the rest of the State. State Exh. 18a.

The opinion of the court of appeals has exacerbated this problem by essentially creating a perpetual interdistrict remedy machine. The court warned that any cessation of the interdistrict busing program would "increas[e] the degree of segregation in [City] schools." Pet. App. 17a. Ignoring the effect of private housing choices and demographic trends, the court even went so far as to suggest that termination of court-ordered State funding *itself* might trigger a constitutional violation to the extent "significant resegregation of the city schools" would result from cessation of the interdistrict program. *Id.* As a result, the district court cannot terminate the interdistrict funding decree (for to do so would result in "resegregation" in the City), yet the existence of that decree gives suburban school districts a due process right (according

to the court of appeals) to compel the State to continue funding the interdistrict remedies indefinitely.

In sum, the logic of the court of appeals ensures that the interdistrict remedy will be self-perpetuating. The only possible brake on this unconstitutional bootstrapping scheme is for the State to achieve a settlement, but the court's sweeping orders have, of course, removed any incentive respondents might otherwise have to bring this funding windfall to a halt. As the turn of events in the *Missouri* v. *Jenkins* litigation ably demonstrates, it is only decisive action by this Court that will motivate the parties to reach a negotiated resolution of these disputes. See *Jenkins* v. *Missouri*, 122 F.3d 588 (8th Cir. 1997) (approving, over plaintiffs' objections, settlement agreement between the State and the Kansas City school district reached as a result of this Court's decision in *Jenkins III*). Absent such action by this Court, the State—and all of its citizens—will continue to be the victim of the systematic overreaching that unfortunately has characterized the entire 17-year-long remedial phase of this case.

CONCLUSION

The petition for writ of certiorari should be granted. The Court may wish to consider summary reversal in this case.

Respectfully submitted,

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November 25, 1997

APPENDICES

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 97-2009

Appeal from the United States District Court
for the Eastern District of Missouri

MICHAEL C. LIDDELL, a minor, by MINNIE LIDDELL, his mother and next friend; KENDRA LIDDELL, a minor, by MINNIE LIDDELL, her mother and next friend; MINNIE LIDDELL; RODERICK D. LEGRAND, a minor, by LOIS LEGRAND, his mother and next friend; LOIS LEGRAND; CLODIS YARBER, a minor, by SAMUEL YARBER, his father and next friend; SAMUEL YARBER; EARLINE CALDWELL; LILLIE CALDWELL; GWENDOLYN DANIELS; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; UNITED STATES OF AMERICA,

Plaintiffs-Appellees,

CITY OF ST. LOUIS,

Plaintiff,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS; HATTIE R. JACKSON, President, Board of Education of the City of St. Louis; REV. EARL E. NANCE, JR., a member of the Board of Education of the City of St. Louis; RENNI B. SHUTER, a member of the Board of Education of the City of St. Louis; PAULA V. SMITH, a member of the Board of Education of the City of St. Louis; DR. ALBERT D. BENDER, SR., a member of

the Board of Education of the City of St. Louis; EDDIE G. DAVIS, a member of the Board of Education of the City of St. Louis; EDDIE G. DAVIS, a member of the Board of Education of the City of St. Louis; DR. JOHN P. MAHONEY, a member of the Board of Education of the City of St. Louis; MARYBETH MCBRYAN, a member of the Board of Education of the City of St. Louis; THOMAS M. NOLAN, a member of the Board of Education of the City of St. Louis; WILLIAM PURDY, a member of the Board of Education of the City of St. Louis; ROBBYN G. WAHBY, a member of the Board of Education of the City of St. Louis; MADYE HENSON WHITHEAD, a member of the Board of Education of the City of St. Louis; DR. CLEVELAND HAMMONDS, JR., Superintendent of Schools for the City of St. Louis,

Defendants-Appellees,

RONALD LEGGETT, St. Louis Collector of Revenue,

Defendant,

STATE OF MISSOURI; MEL CARNAHAN, Governor of the State of Missouri; JEREMIAH (JAY) W. NIXON, Attorney General; BOB HOLDEN, Treasurer; RICHARD A. HANSON, Commissioner of Administration; ROBERT E. BARTMAN, Commissioner of Education; MISSOURI STATE BOARD OF EDUCATION, and its members; THOMAS R. DAVIS; GARY M. CUNNINGHAM; SHARON M. WILLIAMS; PETER F. HERSCHEND; JACQUELINE D. WELLINGTON; BETTY E. PRESTON; RUSSELL V. THOMPSON; RICE PETE BURNS,

Defendants-Appellees,

SPECIAL SCHOOL DISTRICT OF ST. LOUIS COUNTY; AFFTON BOARD OF EDUCATION; BAYLESS BOARD OF EDUCATION; BRENTWOOD BOARD OF EDUCATION; CLAYTON BOARD OF EDUCATION; FERGUSON-FLORISSANT BOARD OF EDUCATION; HANCOCK PLACE BOARD OF EDUCATION; HAZELWOOD BOARD OF EDUCATION; JENNINGS BOARD OF EDUCATION; KIRKWOOD BOARD OF EDUCA-

TION; LADUE BOARD OF EDUCATION; LINDBERGH BOARD OF EDUCATION; MAPLEWOOD-RICHMOND HEIGHTS BOARD OF EDUCATION; MEHLVILLE BOARD OF EDUCATION; NORMANDY BOARD OF EDUCATION; PARKWAY BOARD OF EDUCATION; PATTONVILLE BOARD OF EDUCATION; RITENOUR BOARD OF EDUCATION; RIVERVIEW GARDENS BOARD OF EDUCATION; ROCKWOOD BOARD OF EDUCATION; UNIVERSITY CITY BOARD OF EDUCATION; VALLEY PARK BOARD OF EDUCATION; WEBSTER GROVES BOARD OF EDUCATION; WELLSTON BOARD OF EDUCATION; ST. LOUIS COUNTY; BUZZ WESTFALL, County Executive; JAMES BAKER, Director of Administration, St. Louis County, Missouri; ROBERT H. PETERSON, Collector of St. Louis County "Contract Account," St. Louis County, Missouri,

Defendants-Appellees,

THE ST. LOUIS CAREER EDUCATION DISTRICT,

Defendant,

ST. LOUIS TEACHERS' UNION, LOCAL 420, AFT, AFL-CIO,

Intervenor Below.

Submitted: July 17, 1997

Filed: September 25, 1997

Before McMILLIAN, HEANEY, and FAGG, Circuit Judges.

HEANEY, Circuit Judge.

The State of Missouri (State) appeals from an April 10, 1997 order of the United States District Court for the Eastern District of Missouri denying the State's motion to end all efforts to recruit and admit new students into the

voluntary interdistrict transfer plan (VITP) for the 1997-98 school year. The State contends that the district court acted contrary to the United States Supreme Court's decision in *Missouri v. Jenkins,* 115 S. Ct. 2038 (1995) (*Jenkins III*) in denying its motion. We do not believe that it did.

On April 23, 1996, the district court appointed Dr. William H. Danforth as settlement coordinator with the responsibility and authority to conduct conferences with all persons involved in the case, to secure the services of experts, and to stimulate negotiations among the parties. Dr. Danforth continues in this capacity as of the date of this opinion. Moreover, the district court has under consideration a motion by the State to have the St. Louis School District declared unitary. Given the long history of state-mandated, segregated schools, the complexity of the issues, and the difficulty of developing a plan that will ensure that students of all races will have a continuing equal opportunity for a quality, integrated education, the district court did not abuse its discretion in denying the State's motion to phase out the voluntary transfer of black city students to county districts pending settlement negotiations. We encourage the parties to proceed diligently with their negotiations and believe that the settlement coordinator should be permitted to complete this important assignment. We urge the district court to ascertain the status of the negotiations, and in the event the negotiations reach an impasse, the district court should promptly rule on the pending unitary status motion. We affirm the order of the district court.

Background

The early history of this litigation is chronicled in our earlier opinions and will only be summarized here.[1] In

[1] *See Liddell v. Board of Educ.*, 882 F.2d 298 (8th Cir. 1989); *Liddell v. Board of Educ.*, 873 F.2d 191 (8th Cir. 1989); *Liddell v. Missouri*, 731 F.2d 1294 (8th Cir.) (en banc), *cert. denied*, 469

1972, the plaintiffs brought an action against the Board of Education of the City of St. Louis (City Board) alleging that the city schools were segregated by race as a matter of state law and practice. Thereafter, the State of Missouri was joined as a party defendant. The plaintiffs and the United States as amicus submitted desegregation plans to the district court. The district court held a trial and found no constitutional violation. We reversed, holding that prior to 1865 the State prohibited the creation or maintenance of schools for teaching black children to read or write and that, after that date until 1980, the City Board and the State were jointly responsible for maintaining a segregated school system. *Adams v. United States*, 620 F.2d 1277, 1280 (8th Cir.) (en banc), *cert. denied*, 449 U.S. 826 (1980).[2] We further noted that the City Board and the State failed to take effective measures to desegregate the school system in the years immediately following *Brown v. Board of Education*, 347 U.S. 483 (1954). We remanded the matter to the district court with directions to develop and implement a plan to integrate the St. Louis public schools.

On remand, the district court ordered the implementation of a mandatory desegregation plan within the city schools with funding to be shared equally by the City Board and the State. The district court directed the City Board and the State to develop and submit plans to alleviate the segregated conditions within the city schools through interdistrict transfers between the city and the suburban school districts. *Liddell v. Board of Educ.*, 491 F. Supp. 351 (E.D. Mo. 1980). The Liddell and Caldwell plaintiffs (representing black parents and stu-

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• U.S. 816 (1984) (*Liddell VII*); *Liddell v. Board of Educ.*, 677 F.2d 626 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982) (*Liddell V*); *Liddell v. Board of Educ.*, 667 F.2d 643 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981) (*Liddell III*); and *Adams v. United States*, 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied*, 499 U.S. 826 (1980).

[2] Only one party, the Adams plaintiffs, petitioned the Supreme Court for a writ of certiorari. The State did not file a petition.

dents) and the Adams plaintiffs (representing white parents and students) appealed.[3] The State contended that it should not be required to pay any of the costs of integration and specifically challenged paragraph 12 of the district court's order which provided:

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> > a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

Id. at 353. We affirmed, noting that "the voluntary exchanges contemplated by section [12](a) must be viewed as a valid part of the attempt to fashion a workable remedy within the City." *Liddell v. Board of Educ.*, 667 F.2d 643, 651 (8th Cir.), *cert. denied*, 454 U.S. 1081 (1981).

On August 24, 1981, the district court added eighteen St. Louis County suburban school districts (County Districts) as parties defendant and entered various other orders relating to desegregation of the city schools. The County Districts, the State, and the City Board appealed. The State contended that it could not be required to implement a remedy affecting County Districts until a

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[3] The Liddell plaintiffs contended that the plan did not go far enough to remedy the defendants' discriminatory practices; and the Adams plaintiffs contended that the district court had gone too far in its St. Louis School District reassignment plan.

hearing had been held. The Adams plaintiffs contended the district court could order the State to consolidate city and county schools if necessary to effectuate desegregation of the city schools and that these actions could be taken without additional hearings or liability findings. The City Board argued that the district court orders were not reviewable. We held that the court order adding additional parties was not appealable. We stated:

> The district court has yet to issue an order that impacts any of the county schools or units of government. Thus, we are being asked not to rule on a specific plan but to anticipate what the district court may have in mind and to instruct it as to what it can or cannot do. The most that can be said is that the district court has indicated in one or more of its orders that it may take actions which impact significantly on St. Louis County school districts.

Liddell v. Board of Educ., 677 F.2d 626, 641 (8th Cir.), *cert. denied*, 459 U.S. 877 (1982). We remanded to the district court for action consistent with our opinion.

On August 6, 1982, the district court entered an order in which it disclosed that if it held a hearing and found that the County Districts had committed constitutional violations that contributed to the segregation of the St. Louis School District, it would order the consolidation of the city and county schools. The court scheduled interdistrict liability hearings. Before the hearings were held, however, the City Board, the Liddell plaintiffs, the Caldwell plaintiffs, and all eighteen County Districts entered into a settlement agreement that settled the plaintiffs' interdistrict claims against the eighteen County Districts. The agreement provided for voluntary interdistrict transfers between city and county schools and included fiscal incentives to be funded by the State to encourage the transfers. Each district receiving sufficient transfers within five years to satisfy its desegregation obligations

would receive a final judgment.[4] The State, having been found to be the primary constitutional violator, was ordered to fund the transfer of city students to the County Districts. We affirmed the district court in an en banc opinion and set forth our reasons in great detail. *Liddell v. Missouri* (*Liddell VII*), 731 F.2d 1294, 1301-09 (8th Cir.) (en banc), *cert. denied*, 496 U.S. 816 (1984).[5]

In *Liddell v. Board of Education*, 873 F.2d 191, 192 (8th Cir. 1989), the State appealed from a district court order "clarifying the extent of Missouri's funding obligations for interdistrict student transfers in the . . . desegregation case." It took the position that when a County District had achieved its designated plan ratio, the State was no longer required to pay for transfers. The State sought further clarification of its funding obligation. We stated:

> Missouri's obligation is to fund interdistrict transfers necessary to reach 15,000 students—no more, no less. . . . The parties agree the total number of students currently attending county schools under the interdistrict transfer program is less than 15,000. Thus, Missouri's obligation to fund interdistrict transfers has not yet been fulfilled. Insofar as the district court's order restoring state funding complies with this portion of our opinion, we affirm. Furthermore,

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[4] The settlement agreement further provided "that after a school district receives an order granting it final judgment, it has a continuing obligation to: 'cooperate in the recruitment and promotion of transfers . . . .'" *Liddell v. Board of Educ.*, 96 F.3d 1091, 1094 (8th Cir. 1996) (quoting Appellants' Jt. App. at 108).

[5] In a subsequent opinion, *Liddell v. Board of Educ.*, 851 F.2d 1104, 1105 (8th Cir. 1988), we noted that 12,000 black students were then enrolled in the County Districts. This number has remained relatively constant up to the present. The County Districts state in their current briefs that they are willing to continue to accept the voluntary transfers under the terms of the settlement agreement. Most, if not all, of the County Districts have achieved the plan ratios or goals established under the settlement agreement.

> the parties shall take whatever steps are necessary to ensure that 15,000 city students are enrolled in the county schools. In light of the parties' progress to date, this goal is attainable, and it must be achieved at the earliest opportunity.

Id. at 194. No petition for a writ of certiorari was filed. We were asked to clarify our opinion a few months later. We again stated:

> 1. Missouri is obligated to fund voluntary transfer students up to a total of 15,000, regardless of any individual county district's Plan Ratio and/or Plan Goal attainment. . . .
>
> 2. The state's obligation to fund the voluntary transfer of students will continue until such time as the state is relieved of that obligation.

Liddell v. Board of Educ., 882 F.2d 298, 299 (8th Cir. 1989). Again, no petition for a writ of certiorari was filed.

In October 1991, the State filed the first of three motions to declare the St. Louis School District unitary, terminate desegregation funding, and release all defendants from court supervision. The United States, the City Board, and the plaintiffs responded that consideration of unitary status was premature. The State did not reply to the responses. Instead, it filed a new motion on May 7, 1992, requesting partial unitary status. The district court held that while the State's request was premature, the State was entitled to answers to certain discovery requests because a future declaration of unitary status might be warranted. The State did not appeal this ruling to this court.

In November 1993, the State filed an amended motion for unitary status. It informed the court that it would be prepared to present evidence in support of its amended motion within one year. Eleven months later the State

asked the district court for a hearing date on its motion for unitary status. On February 28, 1995, the district court scheduled a hearing for September 1995. This hearing was later rescheduled for March 1996.

On January 4, 1996, while the unitary status motion was still pending, the State filed a motion to terminate the VITP on the basis of *Jenkins III*. It described its motion as conditional and not ripe for court action because it desired a ruling on its motion only if the court failed to enter a finding of unitary status following the hearing scheduled for March 1996. The City Board and the plaintiffs requested that the hearing on unitary status be postponed while the State's *Jenkins III* motion was adjudicated. The plaintiffs, joined by the United States, alternatively requested that the court appoint a settlement coordinator to resolve the litigation without the need for trial. The State again requested that the *Jenkins III* issue be addressed only after a hearing on its unitary status motion was not granted in full.

On February 15, 1996, the court denied the State's *Jenkins III* motion as not ripe. It also denied the request to postpone the hearing on unitary status and decided that the appointment of a settlement coordinator would be more beneficial after a hearing on the State's unitary status motion had been held. The court stated that:

> [It] agreed with plaintiffs that the best resolution of this case would be an agreed-upon plan for ending Court supervision of the St. Louis Public Schools. The Court however is reluctant to continue the hearing. It may well be that the possibility for settlement will be greater following the hearing, at which time the appointment of a Settlement Coordinator would be appropriate and beneficial.

G(1939)96 at 2. The State did not appeal the order denying its *Jenkins III* motion.

In March 1996, following extensive discovery, the district court conducted a three-week unitary status hearing. Following the hearing, it appointed Dr. William H. Danforth, former Chancellor of Washington University of St. Louis, as the settlement coordinator. It gave the coordinator broad powers designed to stimulate negotiations and directed the parties and their counsel to attend all meetings scheduled by the settlement coordinator and to participate in good faith in the negotiations. It ordered "that all components of the settlement agreement now in force shall continue as they are currently operating." G(2062)96.

On June 26, 1996, the district court, responding to a motion by the State, held that settlement negotiations would be kept confidential, that the settlement coordinator should not recommend to the court how the case should be resolved, and refused to set a time limit for the parties to continue negotiations, indicating it was confident that the settlement coordinator would proceed with all diligence. G(2134)96.

On July 24, 1996, the State appealed district court orders G(2062)96 and G(2134)96, and sought a stay of the interdistrict component of the desegregation remedy pending appeal of the order appointing the settlement coordinator. It sought alternative remedies limiting its obligations under the desegregation plan. The district court denied motions for a stay pending appeal on August 14, 1996. G(2175)96. This court and Justice Thomas, as Circuit Justice, denied substantially similar motions for a stay. The State again appealed the denial of the stay motion. This court consolidated and then dismissed all pending appeals. We noted that G(2062)96 and G(2134)96 were interlocutory and related to settlement procedures and case management and could not be characterized as appeals from orders denying an injunction. We stated that "[a] district court, particularly in school desegregation cases, has broad discretion to control its docket and has the necessary flexibility to shape rem-

edies that adjust public and private needs." *Liddell v. Board of Educ.*, 105 F.3d 1208, 1212 (8th Cir. 1997). With respect to G(2175)96, we stated:

> The State argues that the district court erred because it effectively denied its motion for unitary status. We disagree. The district court *has* yet to rule on the State's unitary status motion. The district court in this case has not refused to rule on the State's motion that the St. Louis School District be declared unitary. It has simply postponed post-hearing briefing and deferred final ruling on this matter. We cannot review a matter that has not been ruled on by the district court. We lack jurisdiction over the State's claim that the district court has erroneously denied its motion for unitary status.

Id. The State filed a petition for rehearing en banc; that petition was denied on May 7, 1997. No petition for a writ of certiorari was filed.

On March 14, 1997, the State moved the district court for an order directing that all parties immediately cease efforts to recruit and admit new students into the VITP and relieve the State from any funding obligations with respect to such students. The State made the same argument in this motion as it *made* in *Liddell v. Board of Education*, 105 F.3d 1208 (8th Cir. 1997), that the VITP violates *Jenkins III*. On April 10, 1997, the district court denied the State's motion, stating that it did so for the reasons set forth by the responses of certain county districts, the United States, the Caldwell-NAACP plaintiffs, and the City Board. The State now appeals.[6]

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[6] The County Districts maintained that, while they took no position regarding when the VITP might be phased out, a sufficient amount of "lead time" would be necessary to prevent disruption to students, parents, and staff as well as to preserve the interests of sound budgetary and operational management. The United States contended that the settlement process should be permitted to run

The District Court Did Not Abuse Its Discretion in Denying the State's Motion to Phase Out the VITP

The State appeals from a district court order denying its motion for an order (1) directing that all parties and all court advisory panels immediately cease all efforts to recruit and admit new students into the VITP, and (2) relieving the State from any funding obligations as to such students. We ruled against the State on a similar question only eight months ago and held that the district court did not abuse its discretion in denying the State's request. *Liddell*, 105 F.3d at 1212. No new arguments are advanced that cause us to change our position at this time. Settlement negotiations are still ongoing. At oral argument, counsel for the State asserted that settlement negotiations have reached an impasse, but counsel for all the other parties disagreed. As all parties are bound by a district court order to maintain confidentiality and as the settlement coordinator has not yet filed a report indicating an impasse, we can only assume the settlement coordinator is making every effort to resolve the many complex issues that must be addressed.[7]

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its course and that the State's *Jenkins III* motion was not yet ripe. The Caldwell plaintiffs argued that the State had already lost its challenge to the continuation of the VITP and questioned the State's public posturing during the settlement process. They maintained that the State had made no showing that the city schools, faculty, etc. were capable of absorbing returning students if the VITP were terminated. The City Board argued that the State's motion should be denied because it undermined the settlement process, failed on the merits, and violated the mandate from *Freeman v. Pitts*, 503 U.S. 467 (1992), that requires a transition phase for the orderly withdrawal of court supervision.

[7] We note that as recently as September 10, 1997, the attorney general of the State of Missouri made public a new proposal to end the litigation. We assume the settlement director and all parties to this litigation were notified of the proposal and that this proposal, as well as others, will be considered by the parties in settlement negotiations.

It is important to bear in mind that the current school desegregation plan is based on a "unique and comprehensive settlement agreement" approved by this court sitting en banc in 1984. *Liddell*, 731 F.2d at 1297.[8] We note that all parties other than the State have indicated a willingness to continue essential elements of the plan, including the interdistrict transfer of black city students to the County Districts.

Settlement is the preferred method of resolving protracted school desegregation cases. As recently as 1990 in considering the proposed settlement of the Little Rock School District desegregation case, we stated:

> The law strongly favors settlements. Courts should hospitably receive them. This may be especially true in the present context—a protracted highly divisive, even bitter [desegregation] litigation, any lasting solution to which necessarily depends on the good faith and cooperation of all the parties, especially the defendants. As a practical matter a remedy that everyone agrees to is a lot more likely to succeed than one to which the defendants must be dragged kicking and screaming.

Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1, 921 F.2d 1371, 1383 (8th Cir. 1990). Consistent

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[8] This desegregation plan resulted from a settlement agreement encouraged by the Honorable William L. Hungate, United States District Judge for the Eastern District of Missouri. In encouraging the parties to settle, he stated:

> Society's greatest opportunities lie in encouraging human inclinations toward compromise, rather than stirring our tendencies for competition and rivalry. If lawyers, educators, and public officials do not help marshall cooperation and design mechanisms that promote peaceful resolution of conflicts, we shall miss an opportunity to participate in the most creative social experiments of our time.

Liddell v. Board of Educ., 567 F. Supp. 1037, 1041 (E.D. Mo. 1983) (citation omitted).

with this court's preference, we recently approved a settlement agreement in the Kansas City School District desegregation case. *Jenkins v. Missouri*, No. 97-1968, slip op. at 35 (8th Cir. Aug. 12, 1997).[9]

Given the long history of state-mandated, segregated schools, the complexity of the issues, and the difficulty of developing a plan that will ensure that students of all races will have a continuing equal opportunity for a quality, integrated education, the district court did not abuse its discretion in denying the State's motion to phase out the voluntary transfer of black city students to the County Districts pending settlement negotiations.

There can be no doubt as to the complexity of the issues that need to be resolved either by settlement or court order. For example, over the course of several years, approximately 12,000 black city students per year have voluntarily transferred from city schools to county schools. Ending or phasing out this program will inevitably lead to a significant increase in the black population of the St. Louis School District and may well result in the resegregation of the St. Louis schools through something other than a change in demographic factors. Moreover, the desegregation plan involves remedial programs, magnet schools, student assignments, teacher exchanges, and other programs designed to give students of all races an equal opportunity for a quality, integrated education, each of

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[9] The general principle that the law favors settlement agreements has been recognized for over 100 years. *See Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910) (compromises of disputed claims are favored by the courts) (citing *Hennessy v. Bacon*, 137 U.S. 78 (1890)). This principle is recognized in desegregation cases. *Armstrong v. Board of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980)); *Jones v. Caddo Parish Sch. Bd.*, 704 F.2d 206, 221 (5th Cir. 1983). *See also* Daniel J. McMullen and Irene Hirata McMullen, *Stubborn Facts of History—The Vestiges of Past Discrimination in School Desegregation Cases*, 44 Case W. Res. L. Rev. 75 (1993)).

which must be independently considered pursuant to *Green v. New Kent County School Board*, 391 U.S. 430 (1968), and *Freeman v. Pitts*, 503 U.S. 467 (1992). From the beginning, the plan has relied on state and city funding. All elements of the plan have been repeatedly subject to district and circuit court review, many of which became the subject of petitions for writs of certiorari to the United States Supreme Court. *See* note 1, *supra*. Under these circumstances, we do not believe that the district court abused its discretion in refusing the State's request to enjoin the parties and panels from immediately ceasing all efforts to recruit and admit new students into the VITP and relieve the State from any funding obligations as to such students pending settlement negotiations.

The Unitary Status Motion

In the event the district court determines that an impasse in the settlement negotiations has been reached, it must then decide the State's pending motion to have the St. Louis School District declared unitary and determine the consequences that flow from that decision. In reaching these decisions, the district court shall be guided by the Supreme Court's decisions in *Freeman*, *Dowell v. Board of Education of Oklahoma City Public Schools*, 498 U.S. 237 (1991), and *Green*.

It is clear from these decisions, particularly *Freeman* and *Dowell*, that the Supreme Court requires that once a school district has achieved unitary status, a district court should not deny that status to a school district because of demographic factors or changes since the desegregation plan was initiated. The Court made clear in *Dowell* that on obtaining unitary status, the defendant school district would not return to its former ways.[10]

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[10] The Court stated that:

> In the present case, a finding by the District Court that the Oklahoma City School District was being operated in compli-

Herein lies the problem. The historical record reveals that significant progress has been made in providing equal opportunities through the programs that have been in effect for several years. As previously noted, if some or all of these programs are ended by a declaration that the St. Louis School District has achieved unitary status, then the immediate effect will most probably be a significant resegregation of the city schools. The inescapable result would be that approximately 12,000 black students would be reassigned to the city schools, thereby increasing the degree of segregation in those schools. Unlike the situation in *Freeman* and *Dowell*, the resegregation would not result from changed demographic factors. Moreover, segregation may very well be increased in the city schools if the magnet or remedial programs are either eliminated or limited in scope and the students are reassigned on the basis of neighborhood schools rather than on the current basis, which is designed to secure the maximum desegregation practicable.[11] We do not say and are not prepared to say at this time how the mandate of the Supreme Court, particularly in *Dowell* that resegregation should not result from a declaration of unitary status, can be achieved; but the issue is one that must be dealt with either in settlement negotiations or by district court order.

The State does not dispute the fact that ending the voluntary interdistrict transfer of black city students to

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> ance with the commands of the Equal Protection Clause of the Fourteenth Amendment, and that it was unlikely that the Board would return to its former ways, would be a finding that the purposes of the desegregation litigation had been fully achieved. No additional showing of 'grievous wrong evoked by new and unforseen conditions' is required of the Board.

Dowell, 498 U.S. at 247.

[11] It may well be, as *Freeman* points out, that some elements of the program are unitary and will remain so if that status is declared. The Supreme Court states that each element is to be treated independently. *Freeman*, 503 U.S. at 489.

the County Districts and limiting its other responsibilities will probably result in some resegregation of the city schools. Nor does it dispute that black students in St. Louis were either denied an education or limited to attending segregated schools for at least 140 years, resulting in savings to the St. Louis School District and the State. *See Adams v. United States*, 620 F.2d 1277 (8th Cir. 1980). Rather than address these issues, the State argues that it has expended large sums of money in the twenty years that this program has been in effect, it has done its share, and the time has come to end its responsibilities in the matter. In support of ending its obligations, the State points to the fact that it has initiated a number of programs that have particular benefit to disadvantaged city students [12] and has publicly proposed to settle its obligations by making a lump sum payment to the St. Louis School District.

The district court must take all of these factors into consideration in determining whether to grant full or partial unitary status and what the defendants' continuing obligations will be if such status is granted. We will not prejudge that matter or issue an advisory opinion. We merely repeat that the complexity of the issues involved support the view heretofore expressed that the best way to resolve these problems and provide a quality, integrated education to all city students is through good-faith settlement negotiations.

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[12] These programs include a comprehensive school improvement program, reading intervention programs, drug-free schools program, emphasis on early childhood education, early childhood programs, AIDS awareness education, unwed mothers' education, gun-free schools, provision of medical services to Medicaid-eligible school children, and Missouri's nationally-renowned "Parents as Teachers" program. *See* Mo. Rev. Stat. §§ 162.300; 167.268, .270, .294, .606; 191.668; 195.214; 571.030.

The *Jenkins III* Issue

The State's principal argument is that the district court is without discretion in this matter and that *Jenkins III* requires that the VITP be phased out now. We do not agree that *Jenkins III* requires this result. A premise of *Jenkins III* was that the trial court specifically found that no interdistrict violation had taken place. No such determination has been made here.[13] To the contrary, from the beginning the plaintiffs asserted interdistrict violations. Rather than contest these allegations, the County Districts entered into a settlement agreement under which they agreed to accept a significant number of transfer students and in return were promised judgments relieving them from any possible constitutional violations. Under these circumstances, it would be wholly inappropriate for this court to make an initial determination with respect to an interdistrict violation.

Making such a determination would invade the province of the district court and would be unfair to the parties by denying them the opportunity, should it become necessary, to litigate the interdistrict violation issue. To require the County Districts to litigate this issue now, after voluntarily accepting thousands of city transfer students for twenty years, would violate their fundamental right to due process. The plaintiffs would be equally deprived if they were denied the opportunity to prove interdistrict violations. Moreover, the fundamental and undisputed fact remains that the State has been found to be the primary constitutional violator, and this court has consistently held in panel and in en banc opinions that the State could be re-

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[13] Justice O'Connor stated in *Jenkins III* in discussing the Kansas City School District, "Neither the legal responsibility for nor the causal effects of . . . racial segregation transgressed its boundaries, and absent such interdistrict violation or segregative effects, *Milliken* and *Gatreaux* do not permit a regional remedial plan." *Jenkins III*, 115 S. Ct. at 2059 (O'Connor, J., concurring).

quired to fund the VITP. *See* note 1, *supra*. Even if it were appropriate for us to address that issue today, however, this court could not make a proper determination without a complete record. In order to apprehend fully the constitutional violations as they existed many years ago, we must employ something more rigorous than hindsight, guesswork, and speculation.

In *Jenkins III*, Chief Justice Rehnquist, speaking for the Court, stated that the Kansas City desegregation plan was grounded in "improving the desegregative attractiveness of the" Kansas City, Missouri School District (KCMSD). *Jenkins III*, 115 S. Ct. at 2050. Here, neither "desegregative attractiveness" nor "suburban comparability" were the basis of the settlement agreement of the district court's or this court's approval of the settlement plan. Rather, the plan was premised on the fact that both the State and the County Districts opposed consolidation of the city and county districts and a voluntary transfer plan could and would be an integral factor in desegregating the city schools. Everyone but the State agreed to this solution, and it offered no alternative designed to secure the black city students an opportunity for an equal education. The premise has proven valid, and the St. Louis schools have achieved a high degree of integration.

We also note that Justice O'Connor, who concurred in the plurality opinion in *Jenkins III*, stated that the district court found "that the segregative effects of KCMSD's constitutional violation did not transcend its geographical boundaries." *Jenkins III*, *id.* at 2060. As previously noted, there has been no such finding in this case. Indeed, the parties are still at odds as to whether interdistrict violations occurred; and rather than have this argument resolved after lengthy litigation, the plaintiffs, the City Board, the County Districts, and the United States agreed to the VITP. Justice O'Connor also noted the limited nature of the *Jenkins III* decision and remand, stating that "[t]he Court today discusses desegregative attractiveness

only insofar as it supports the salary increase order under review, . . . and properly refrains from addressing the propriety of all the remedies that the District Court has ordered, revised, and extended in the 18-year history of this case." *Id.* at 2061.[14]

There is, of course, language in the majority opinion in *Jenkins III* suggesting that no interdistrict relief can be granted unless an interdistrict violation or segregative effects have been proved. This language must be tempered by the facts in *Jenkins III* and limited nature of the actual holdings. In our view, the question remains sufficiently open to permit us to follow our numerous precedents and hold that *Jenkins III* does not require us to hold that the VITP must be terminated or phased out at this time.

Conclusion

We affirm the order of the district court denying the State's motion to end all efforts to recruit and admit new students into the VITP for the 1997-98 school year. The district court did not abuse its discretion in denying the State's motion to phase out the voluntary transfer of black city students to the County Districts pending settlement negotiations. Its decision to do so was not contrary to the Supreme Court's decision in *Jenkins III*. We renew our encouragement to the parties to make every effort to resolve this matter so that students of all races will have a continuing equal opportunity for a quality, integrated education. In the unfortunate event that the negotiations

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[14] The district court determined that the KCMSD had attained unitariness in only one of the five aspects enumerated in *Green*, 391 U.S. at 435. *Jenkins v. Missouri*, No. 77-0420-CV-W-RGC, slip op. at 28-37, 59 (W.D. Mo. Mar. 25, 1997). We affirmed the district court's order. *Jenkins v. Missouri*, No. 97-1968, slip op. (8th Cir. Aug. 12, 1997).

reach an impasse, the district court should promptly rule on the pending unitary status motion.

A true copy.

Attest.

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX B

[Filed Apr. 10, 1997]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-0100C(6)
G(2391)97

CRATON LIDDELL, *et al.*,
Plaintiffs,

vs.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, *et al.*,
Defendants.

MEMORANDUM AND ORDER

This matter is before the Court on the State of Missouri's motion G(2338)97 to modify the Court's injunctions relating to the Voluntary Interdistrict Transfer Plan (VITP). The State seeks an order that all efforts to recruit and admit new students into the VITP cease and that no new students be enrolled in the program for the 1997-98 school year. Responses have been filed by certain county districts, G(2363)97; the United States G(2365)97; the Caldwell-NAACP plaintiffs, G(2370)97; and City Board, G(2371)97.

For the reasons set forth in these responses, the Court believes the motion should be denied.

Accordingly,

IT IS HEREBY ORDERED that the State of Missouri's motion G(2338)97 to modify is denied.

Dated this 10th day of April, 1997.

/s/ George F. Gunn, Jr.
GEORGE F. GUNN, JR.
United States District Judge

COURT-ORDERED EXPENDITURES BY STATE OF MISSOURI FOR ST. LOUIS VOLUNTARY INTERDISTRICT TRANSFER PROGRAM

Fiscal Year	County Tuition Incentives	City Tuition Incentives	County Home District Incentives (Phantom Payments)	City Homes District Incentives (Phantom Payments)	Interdistrict Transportation	County Capital	Voluntary Interdistrict Coordinating Committee (VICC)	Staff Exchange Program	TOTAL
1982 [1]	–	–	0	0	–	0	0	0	**157,327**
1983	2,133,252 [2]	–	0	0	2,264,910	0	0	0	**4,398,164**
1984	5,811,925	34,295	0	0	3,856,385	0	293,718	0	**9,996,322**
1985	13,839,011	956,948	296,189	0	7,524,184	125,000	394,015	0	**23,135,347**
1986	19,568,969	851,675	218,945	4,268,048	10,241,477	100,000	356,515	42,500	**35,648,129**
1987	26,915,088	1,242,977	272,145	6,637,709	18,303,692	208,783	779,321	17,500	**54,377,215**
1988	35,500,340	1,009,659	312,518	9,797,530	19,735,486	258,517	806,597	12,500	**67,433,146**
1989	36,614,643	1,643,357	347,962	12,207,340	20,962,920	2,481,781	865,086	5,000	**75,128,088**
1990	40,762,400	699,150	395,816	12,822,423	20,718,947	767,583	867,991	18,000	**77,052,310**
1991	48,451,788	1,988,963	371,667	13,441,603	22,467,457	6,681,125	1,032,117	9,000	**94,443,720**
1992	54,481,465	2,286,231	407,681	11,607,388	23,150,239	7,360,461	1,099,500	4,500	**100,397,465**
1993	53,791,830	1,638,372	425,925	14,565,053	25,005,097	9,618,314	1,121,091	13,500	**106,179,181**
1994	57,673,456	2,040,595	544,657	15,477,195	26,657,003	5,795,901	1,176,032	0	**109,364,839**
1995	58,448,050	2,350,475	723,499	14,270,284	26,997,455	2,631,630	1,181,927	0	**106,603,320**
1996	61,474,917	2,939,525	0 [4]	0 [4]	27,715,462	1,149,680	922,900	0	**94,202,492**
1997	57,723,257	3,261,361	0 [4]	0 [4]	27,564,850	(588,229)	1,228,372	0	**89,189,619**
1998 [3]	0	0	0 [4]	0 [4]	4,164,973	0	688,507	0	**4,853,488**
Totals	**573,190,391**	**22,943,583**	**4,317,005**	**115,094,571**	**287,330,537**	**36,590,545**	**12,813,687**	**122,500**	**1,052,560,172**

NOTES

1. Payments for tuition incentives (not able to distinguish between county and city) and transportation.
2. Information not available to distinguish between county and city tuition incentives.
3. Payments as of October 21, 1997.
4. Home district incentive calculations are not completed for FY 96 and data is not yet available for FY97 or FY98.

APPENDIX D

TOTAL FUNDING OF DESEGREGATION MEASURES BY THE STATE

[Clerk U.S. District Court
Exhibit: D State 11A
Case No. 72-100 C(6)]

Fiscal Year	Magnet Plan	Quality Education Plan	Part-Time Programs	VIDT Funding	Capital Funding	Intradistrict Plan	Committee/ Misc.	Totals
1981	0	0	0		0	8,530,000	0	8,530,000
1982	0	0	0	157,327	0	8,624,435	0	8,781,762
1983	0	0	0	4,398,164	0	8,130,269	502,940	13,031,372
1984	0	10,625,443	0	9,996,322	0	8,374,806	769,741	29,766,312
1985	0	19,265,882	0	23,135,347	0	8,493,517	504,013	51,398,760
1986	0	10,733,330	9,312,171	35,648,129	0	8,869,793	494,228	65,057,652
1987	0	11,800,842	10,337,651	54,377,215	0	9,361,843	1,349,597	87,227,149
1988	0	11,075,496	11,380,605	67,433,146	1,299,754	9,812,838	1,186,806	102,188,645
1989	0	12,505,937	11,934,270	75,128,088	18,850,890	9,731,791	1,315,819	129,466,795
1990	11,032,089	11,856,898	1,274,844	77,052,310	20,278,927	6,007,519	964,270	128,466,857
1991	13,584,702	10,177,819	1,418,135	94,443,180	20,181,189	6,044,459	632,983	146,482,466
1992	14,001,455	10,305,936	1,511,332	100,397,465	16,934,659	5,973,182	581,244	149,705,278
1993	18,072,252	10,084,813	1,542,141	106,179,181	9,855,247	5,512,102	587,202	151,832,938
1994	19,951,150	10,212,098	1,542,519	109,364,839	4,704,543	5,750,909	483,383	152,009,441
1995	23,580,184	10,492,006	1,597,777	106,603,320	6,995,932	5,751,321	607,672	155,628,213
1996	0	0	0	42,217,947	1,572,950	0	452,704	44,243,602
TOTALS	100,221,832	139,136,500	51,851,445	906,531,981	100,674,091	114,968,784	10,432,602	1,423,817,235

1. 1996 payments through February, 1996. St. Louis expenditures does not include magnet capital.
2. St. Louis expenditures obtained from annual auditor's report.
3. Prior to 1990, magnet costs were paid under the Quality Education and Intradistrict Funds.
4. VICC and county capital expenditures included in VIDT column.
5. Miscellaneous costs generally includes desegregation auditor fees.

SETTLEMENT PLAN EXPENDITURES
QUALITY EDUCATION PROGRAMS
(50% State Funding)

Fiscal Year	State Deseg. Expenditures	SLPS Expenditures	Total Expenditures
1984	10,625,443	10,625,443	21,250,886
1985	19,265,882	19,265,881	38,531,763
1986	10,733,330	10,733,329	21,466,659
1987	11,800,842	11,800,841	23,601,683
1988	11,075,496	11,075,495	22,150,991
1989	12,505,937	12,505,936	25,011,873
1990	11,856,898	11,856,898	23,713,796
1991	10,177,819	10,177,818	20,355,637
1992	10,305,936	10,305,936	20,611,872
1993	10,084,813	10,084,813	20,169,626
1994	10,212,098	10,212,098	20,424,196
1995	10,492,006	10,492,005	20,984,011
TOTAL	139,136,500	139,136,493	278,272,993

1. Funding totals were taken from SLPS' Annual Financial and Compliance Audits for the Settlement Plan—Quality Education Programs. Fiscal year 1984 and 1985 audits are listed as Metropolitan Desegregation Settlement Plan. Thus, Quality Education Programs (50% State funding) and Part-Time Programs (100% State funding) were reported together. There is not enough information to break out separate funding for the purposes of this summary chart.
2. Totals reflect expenditures and encumbrances.
3. Fund 34 provides for the costs associated with the Settlement Plan—Quality Education Programs.

[Clerk U.S. District Court
Exhibits: D State 13
Case No. 72-100 C(6)]

SETTLEMENT PLAN EXPENDITURES
PART-TIME PROGRAMS
(100% State Funding)

Fiscal Year	State Expenditures	SLPS Expenditures	Total Expenditures
1986	9,312,171	0	9,312,171
1987	10,337,651	0	10,337,651
1988	11,380,605	0	11,380,605
1989	11,934,270	0	11,934,270
1990	1,274,844	0	1,274,844
1991	1,418,135	0	1,418,135
1992	1,511,332	0	1,511,332
1993	1,542,141	0	1,542,141
1994	1,542,519	0	1,542,519
1995	1,597,777	0	1,597,777
TOTAL	51,851,445	0	51,851,445

1. Funding totals were taken from SLPS' Annual Financial and Compliance Audits for the Part-Time Integrative and Magnet School Programs and the Part-Time Integrative Program beginning in Fiscal Year 1990.

2. Prior to 1990, Part-time programs also included the Interdistrict Magnets (100%). With L(2090)88 all magnet schools were funded by the Unified Funding Formula, leaving only part-time programs in place.

3. Totals reflect full court-ordered expenditures and eligible encumbrances (amended).

4. Fund 53—This fund is for the costs associated with the Settlement Plan Part-Time Programs with the St. Louis Public Schools.

INTRADISTRICT PLAN EXPENDITURES
Funds 44, 57 and 59
(50% State Funding)

Fiscal Year	State Expenditures	SLPS Expenditures	Total Expenditures
1981	8,530,000	8,603,451	17,133,451
1982	8,624,435	8,607,934	17,232,369
1983	8,130,269	8,130,268	16,260,537
1984	8,374,806	8,374,806	16,749,612
1985	8,493,517	8,493,517	16,987,034
1986	8,869,793	8,869,792	17,739,585
1987	9,361,843	9,361,843	18,723,686
1988	9,812,838	9,812,838	19,625,676
1989	9,731,791	9,731,791	19,463,582
1990	6,007,519	6,007,519	12,015,038
1991	6,044,459	6,044,459	12,088,918
1992	5,973,182	5,973,181	11,946,363
1993	5,512,102	5,512,101	11,024,203
1994	5,750,909	5,750,909	11,501,818
1995	5,751,321	5,751,320	11,502,641
TOTALS	114,968,784	115,025,729	229,994,513

1. Funding totals were taken from the State Auditor's Reports (FY1981 and FY1982) and SLPS' Annual Financial and Compliance Audits (FY1983 to current) for the Intradistrict Plan.
2. Totals reflect full court-ordered expenditures and eligible encumbrances (amended).
3. The Intradistrict Plan consists of Fund 44 Mini-Grant, Fund 57 Intracity Plan and Fund 59 Chapter II. The funding is for special programs and staffing for non-integrated and integrated schools.